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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,310	09/29/2003	Klaus Heilmann	2565/112	5354

26646 7590 04-05/2005

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EXAMINER

MENON, KRISHNAN S

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,310

Applicant(s)

HEILMANN ET AL.

Examiner

Krishnan S Menon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-126 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 68, 82, 96, 109 and 120 is/are allowed.
- 6) ☒ Claim(s) 55-67, 69-81, 83-95, 97-108, 110-119 and 121-126 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 55-126 are pending after the RCE of 3/8/05

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 55-67, 69-81, 83-95, 97-108, 110-119 and 121-126 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. 3435883 (hereinafter referred to as GP (883)).

GP :883 teaches a dialyzer comprising a casing (12) containing hollow fibers and an end cap (24) attached to the casing (10) wherein the end cap (24) comprises a blood inlet channel (28) in axial direction relative to hollow fibers and curved members (50) arranged circumferentially and equidistant from each other to impart circular motion in a first direction (see figures 1-2). With regard to the first and second flow directions, the flow direction is radially outward through the curved members and then changes to radially inward under the member 46 – see flow direction arrow in the figure 1.

Re claims 65,79,93,106 and 118: These claims add further, the limitation of “..the at least one member is integrally formed..”. As can be seen in the figures of GP’883, the

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curved vanes (50) are integrally formed on the member 46 and which is fixedly attached to the end-cap and sealed to the housing; thus the end-cap forming an integral unit.

Integral means 'a complete unit' ("formed as a unit with another part": Webster's Dictionary). Also, "...the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice" (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)). In addition, "integrally formed" denotes a process step of making the part, in which case, the *in re Thorpe* doctrine applies. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Allowable Subject Matter

Claims 68, 82, 96, 109 and 120 are allowed.

Response to Arguments

Applicant's arguments filed 3/8/05 have been fully considered but they are not persuasive.

In response to the argument that Heilmann fails to disclose "...at least one curved member extending in the first direction from the end cap and located within the

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interior chamber of the end cap as recited in the claims ...", the examiner respectfully disagrees with this argument. The cited claims recite "... one curved member extending in the first direction from the end cap and located within the interior chamber of the end cap...". The member (50) is curved, the curved vane (50) extend radially in the first [flow] direction, and it is located within the interior chamber of the end cap. The curved vanes are more than one – plurality of vanes.

The rest of the arguments are moot because of the new grounds for rejection.

Conclusion

This is a first action on an RCE and is made non-final because of matter not considered in the prior advisory action and the new grounds for rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Krishnan Menon
Patent Examiner


W. L. WALKER
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